



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: San Francisco

Date:

MAR 10 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §
212(h) of the Immigration and Nationality Act, 8 U.S.C. 1182(h)

IN BEHALF OF APPLICANT:

[REDACTED]

Public Copy
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly
for Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States under § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant was admitted to the United States on March 17, 1989, as a nonimmigrant visitor and remained longer than authorized. She married a native of Peru and naturalized United States citizen in September 1991 and is the beneficiary of an approved immediate relative visa petition. The applicant seeks a waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), to reside with her family in the United States.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her qualifying relatives and denied the application accordingly.

On appeal, counsel states that the applicant's last shoplifting offense was committed in 1995. None of the thefts were for an amount over \$400, the applicant has paid all restitution and other damages owed under the terms of her sentences, and she has had no more trouble with the law. Counsel states that the applicant is the mother of three children who were born in [REDACTED] and who became lawful permanent residents as stepchildren of her husband, and one child who was born in the United States. Counsel asserts that the applicant's eldest daughter has a child and is dependent on the applicant for health insurance. Counsel states that the applicant's husband works two jobs and has no time left over to help the children with home work or other activities. Counsel states that the applicant contributes to half of the family income and her removal would cause extreme financial hardship.

The record reflects the following regarding the applicant:

1. On May 15, 1989, the applicant was convicted of shoplifting committed on April 22, 1989. Imposition of sentence was suspended, and she was placed on probation for 18 months and fined.
2. On March 9, 1992, the applicant was convicted of shoplifting. Imposition of sentence was suspended, and she was placed on probation for 2 years and fined. The fine was converted to 50 hours of Public Service work.
3. On April 24, 1995, the applicant was convicted of shoplifting. Imposition of sentence was suspended, and she was placed on probation for 18 months and fined. The fine was converted to 34 hours of Public Service work.

4. On April 3, 1996, the applicant was convicted of shoplifting. Imposition of sentence was suspended, and she was placed on 18 months probation and fined. In lieu of the fine, the applicant was ordered to serve 5 days in jail as a condition of her probation.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

Section 212(h) WAIVER OF SUBSECTION (a)(2)(A)(i)(I),...-The Attorney General may, in his discretion, waive application of subparagraph (A)(i)(I),...if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's

applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed his last violation. Therefore, he is ineligible for the waiver provided by § 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under § 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a § 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

The record reflects that the applicant's three children born in [redacted] age 20, [redacted] age 18, and [redacted] age 14, are a result of her relationship with [redacted], whom she never married. After the applicant married her present spouse in September 1991, they separated in January 1992 and she gave birth to [redacted] age 7 following a relationship with [redacted]. Although it is asserted in the record that [redacted] and [redacted] live at the applicant's address, the applicant only shows [redacted] as a dependent on the latest income tax return. Although the applicant states that she drives [redacted] back and forth to school every day, the child is not claimed as a dependent on her income tax returns and the child's father co-signed for her United States passport, not the applicant. The record fails to establish that [redacted] actually resides with and is supported by the applicant as alleged.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship over and above the normal economic and social disruptions involved in the deportation of a family member that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.